

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION (WORCESTER)**

MICHAEL DAWE

Plaintiff,

V.

CAPITAL ONE BANK

Defendant.

CASE NO. 04-40192 FDS

**CAPITAL ONE BANK'S MOTION FOR
SUMMARY JUDGMENT ON ALL CLAIMS**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendant Capital One Bank (“Capital One”) moves for summary judgment on all of the plaintiff’s claims.. Insofar as (A) the only claimed basis for each and every count in the plaintiff’s complaint is that the dismissal of a state court action to collect a debt that the plaintiff owed to Capital One extinguished the underlying debt and that it therefore was wrongful for Capitol One to continue, after the dismissal, to report the debt to consumer credit agencies and to attempt to collect it, and (B) the Court has ruled in connection with Capital One’s motion for partial summary judgment that the dismissal of the state court action did not extinguish the debt as a matter of law, all of the plaintiff’s claims against Capital One must fail as a matter of law. Accordingly, summary judgment is appropriate on all claims.

For the reasons set forth in Capital One’s memorandum of law filed herewith, Capital One’s motion for summary judgment on all counts of the Complaint should be granted.

REQUEST FOR ORAL ARGUMENT

Capital One believes that oral argument may assist the Court and therefore requests oral argument on its motion for summary judgment.

CAPITAL ONE BANK

By its attorney,

/s/ Bruce D. Berns
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